

AMENDED IN SENATE APRIL 13, 2009

**SENATE BILL**

**No. 448**

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**Introduced by Senator Pavley**

February 26, 2009

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An act to add Article 3.7 (commencing with Section 2089.2) to Chapter 1.5 of Division 3 of the Fish and Game Code, relating to fish and wildlife.

LEGISLATIVE COUNSEL'S DIGEST

SB 448, as amended, Pavley. California State Safe Harbor Agreement Program Act.

Existing law establishes various programs designed to conserve and protect endangered species and wildlife.

This bill would enact the California State Safe Harbor Agreement Program Act, which would establish a program to encourage landowners to manage their lands voluntarily, by means of state safe harbor agreements approved by the Department of Fish and Game, to benefit endangered, threatened, or candidate species without being subject to additional regulatory restrictions as a result of their conservation efforts.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Article 3.7 (commencing with Section 2089.2)
- 2 is added to Chapter 1.5 of Division 3 of the Fish and Game Code,
- 3 to read:

1 Article 3.7. California State Safe Harbor Agreement Program  
2 Act  
3

4 2089.2. (a) This article shall be known and may be cited as  
5 the California State Safe Harbor Agreement Program Act.

6 (b) The Legislature finds that a key to the goals set forth in this  
7 article of conserving, protecting, restoring, and enhancing  
8 endangered, threatened, and candidate species, is their habitat. A  
9 significant portion of the state's current and potential habitat for  
10 these species exists on property owned by private citizens,  
11 municipalities, tribes, and other ~~nonstate and federal~~ *nonfederal*  
12 entities. Conservation efforts on these lands and waters are critical  
13 to help these declining species. Using a collaborative stewardship  
14 approach to these lands and waters will help ensure the success of  
15 these efforts.

16 (c) The purpose of this article is to establish a program that will  
17 encourage landowners to manage their lands voluntarily to benefit  
18 endangered, threatened, or candidate species and not be subject to  
19 additional regulatory restrictions as a result of their conservation  
20 efforts.

21 (d) This article does not relieve landowners of any legal  
22 ~~obligation to avoid, minimize, or mitigate impacts with respect to~~  
23 endangered, threatened, or candidate species existing on their land.  
24 The program established by this article is designed to increase ~~the~~  
25 ~~number of~~ species *populations*, create new habitats, and to enhance  
26 existing habitats. Although this increase may be temporary or  
27 long-term, California state safe harbor agreements shall not reduce  
28 the existing number of species present at the time the baseline is  
29 established by the department.

30 2089.4. As used in this article, the following definitions apply:

31 (a) "Agreement" means a state safe harbor agreement approved  
32 by the department pursuant to this article.

33 (b) "Baseline conditions" means the existing estimated  
34 population size and the extent and quality of habitat for the species  
35 on the land to be enrolled in the agreement that sustain seasonal  
36 or permanent use by the covered species. Baseline conditions shall  
37 be determined by the department in consultation with the applicant  
38 and shall be at least the estimated population size and extent and  
39 quality of habitat for the covered species at the time when the  
40 agreement is executed. Baseline conditions shall be established or

1 approved by the department, based on objective scientific  
2 methodologies. *For purposes of establishing baseline conditions,*  
3 *a person that is not employed by the department may conduct*  
4 *habitat surveys, if that person is qualified, has appropriate species*  
5 *expertise, and has been approved by the department.*

6 (c) “Department” means the Department of Fish and Game,  
7 acting through its director or his or her designee.

8 (d) “Landowner” means any nonstate or federal entity or entities  
9 that lawfully hold any interest in land or water to which they are  
10 committing to implement the requirements of this article.

11 (e) “Management actions” means activities on the enrolled land  
12 or water that are reasonably expected by the department to provide  
13 a net benefit to the species or their habitat, or both.

14 (f) “Monitoring program” means a program established or  
15 approved by the department in accordance with subdivision (f) of  
16 Section 2089.6.

17 (g) “Net conservation benefit” means the cumulative benefits  
18 of the management activities identified in the agreement that  
19 provide for an increase in a species’ population or the enhancement,  
20 restoration, or maintenance of covered species’ suitable habitats  
21 within the enrolled property. Net conservation benefit shall take  
22 into account the length of the agreement, any offsetting adverse  
23 effects attributable to the incidental taking allowed by the  
24 agreement, and other mutually agreed upon factors such as floods,  
25 unplanned fires, and catastrophic events. Net conservation benefits  
26 shall be sufficient to contribute either directly or indirectly to the  
27 recovery of the covered species. These benefits include, but are  
28 not limited to, reducing fragmentation and increasing the  
29 connectivity of habitats, maintaining or increasing populations,  
30 enhancing and restoring habitats, and buffering protected areas.

31 (h) “Return to baseline” means, at the termination of an  
32 agreement, activities undertaken by the landowner to return the  
33 species population or acres of habitat to baseline, excluding  
34 catastrophic events such as floods, unplanned fires, or earthquakes,  
35 and other factors mutually agreed upon prior to permit issuance  
36 and that are beyond the control of the landowner.

37 2089.6. In addition to the other provisions of this article, the  
38 department may authorize acts that are otherwise prohibited  
39 pursuant to Section 2080 through an agreement, if all the following  
40 conditions are met:

1 (a) The department receives a complete application containing  
2 all of the information described in Section 2089.8.

3 (b) The take is incidental to an otherwise lawful activity.

4 (c) The department finds that the implementation of the  
5 agreement is reasonably expected to provide a net conservation  
6 benefit to the species listed in the application. This finding shall  
7 be based, at a minimum, upon the determination that the agreement  
8 is of sufficient duration and has appropriate assurances to realize  
9 these benefits.

10 (d) The take authorized by the agreement will not jeopardize  
11 the continued existence of the species. This determination shall  
12 be made based on the provisions of subdivision (c) of Section  
13 2081.

14 (e) The department finds that the landowner has agreed, to the  
15 maximum extent practicable, to avoid or minimize any incidental  
16 take authorized in the agreement, including returning to baseline.

17 (f) The department has established or approved a monitoring  
18 program, based upon objective scientific methodologies, to provide  
19 information for the department to evaluate the effectiveness and  
20 efficiency of the agreement program, including whether the net  
21 conservation benefits set forth in the agreement are being achieved  
22 and whether the participating landowner is implementing the  
23 provisions of the agreement.

24 (g) The department has determined that sufficient funding is  
25 ensured, for it or its contractors or agents, to determine baseline  
26 conditions on the property, for the landowner to carry out  
27 management actions, and for monitoring for the duration of the  
28 agreement.

29 (h) Implementation of the agreement will not be in conflict with  
30 any existing department-approved conservation or recovery  
31 programs for the species covered by the agreement.

32 2089.8. The landowner shall submit all of the following:

33 (a) A detailed map depicting the land proposed to be enrolled  
34 in the agreement.

35 (b) The common and scientific names of the species for which  
36 the landowner requests incidental take authorization.

37 (c) A detailed description of the current land and water uses for  
38 the geographic area ~~proposed to be enrolled and the landowner's~~  
39 ~~objectives for future uses of this land or water.~~ *for which the*  
40 *landowner requests incidental take authorization.*

1     *(d) A detailed description of the future uses of land or water for*  
2     *the geographic area for which the landowner requests incidental*  
3     *take authorization. This description shall be used only for*  
4     *informational and planning purposes.*

5     ~~(d)~~

6     *(e) The proposed duration of the agreement that is sufficient to*  
7     *provide a net conservation benefit to the species covered in the*  
8     *permit and an explanation of the basis for this conclusion.*

9     ~~(e)~~

10    *(f) A detailed description of the proposed management actions*  
11    *and the timeframe for implementing them.*

12    ~~(f)~~

13    *(g) A description of the possible incidental take that may be*  
14    *caused by the management actions and of the anticipated species*  
15    *populations and habitat changes over the duration of the permit.*

16    ~~(g)~~

17    *(h) A detailed description of the proposed monitoring program.*

18    2089.10. If an agreement has been approved and the department  
19    finds that the agreement is being properly implemented, the  
20    department shall allow the landowner to alter or modify the  
21    enrolled property, even if that alteration or modification will result  
22    in the incidental take of a listed species, to the extent that the  
23    alteration or modification returns the species to baseline conditions.

24    2089.12. (a) Unless the department determines that it is  
25    inappropriate to do so based on the nature of the management  
26    actions being proposed, the species listed in the permit, or other  
27    factors, the agreement shall require that the landowner provide the  
28    department with at least 60 days advance notice of any of the  
29    following:

30    (1) Any incidental take that is anticipated to occur under the  
31    agreement.

32    (2) The landowner's plan to return to baseline at the end of the  
33    agreement.

34    (3) Any plan to transfer or alienate the landowner's interest in  
35    the land or water.

36    (b) (1) If the department receives any notice described in this  
37    section, the landowner shall provide the department, its contractors,  
38    or agents with access to the land or water for purposes of safely  
39    removing or salvaging the species.

1     (2) *The department shall provide notice to the landowner at*  
2 *least seven days prior to accessing the land or water for the*  
3 *purposes of paragraph (1). The notice shall identify the persons*  
4 *selected by the department, its contractors, or agents to access the*  
5 *land or water.*

6     (3) *Notwithstanding paragraph (1), during the seven-day period,*  
7 *a landowner may object, in writing, to the person selected to access*  
8 *the land or water. If a landowner objects, another person shall be*  
9 *selected by the department, its contractors, or agents, and*  
10 *notification shall be provided to the landowner pursuant to*  
11 *paragraph (2). However, if a landowner objects to the selection*  
12 *on three successive occasions, the landowner shall be deemed to*  
13 *consent to access to the land or water by a person selected by the*  
14 *department, its contractors, or agents. Failure by a landowner to*  
15 *object to the selection within the seven-day period shall be deemed*  
16 *consent to access the land or water by the person selected by the*  
17 *department, its contractors, or agents.*

18     2089.14. An agreement may be amended with the mutual  
19 consent of the landowner and the department.

20     2089.16. If a landowner seeks to sell, transfer, or otherwise  
21 alienate the land or water enrolled in the agreement during the  
22 term of the agreement, the person or entity assuming that interest  
23 in the property shall (a) assume the existing landowner's duties  
24 under the agreement, (b) enter into a new agreement with the  
25 department, or (c) withdraw from an existing agreement under the  
26 terms provided in the agreement, as approved by the department.

27     2089.18. The suspension and revocation of the agreement shall  
28 be governed suspension and revocation regulations adopted by the  
29 department.

30     2089.20. (a) This section does not provide the public a right  
31 of entry onto the enrolled land or water. The landowner shall  
32 provide the department, its contractors, or agents with access to  
33 the land or water proposed to be enrolled in the agreement to  
34 develop the agreement, determine the baseline conditions, monitor  
35 the effectiveness of management actions, or safely remove or  
36 salvage species proposed to be taken.

37     (b) *The department shall provide notice to the landowner at*  
38 *least seven days before accessing the land or water for the*  
39 *purposes of subdivision (a). The notice shall identify the persons*

1 *selected by the department, its contractors, or agents to access the*  
2 *land or water.*

3 *(c) Notwithstanding subdivision (a), during the seven-day*  
4 *period, a landowner may object, in writing, to the person selected*  
5 *to access the land or water. If a landowner objects, another person*  
6 *shall be selected by the department, its contractors, or agents, and*  
7 *notification shall be provided to the landowner pursuant to*  
8 *subdivision (b). However, if a landowner objects to the selection*  
9 *on three successive occasions, the landowner shall be deemed to*  
10 *consent to access to the land or water by a person selected by the*  
11 *department, its contractors, or agents. Failure by a landowner to*  
12 *object to the selection within the seven-day period shall be deemed*  
13 *consent to access the land or water by the person selected by the*  
14 *department, its contractors, or agents.*

15 2089.22. (a) If a federal safe harbor agreement has been  
16 approved pursuant to applicable provisions of federal law and the  
17 federal safe harbor agreement contains species that are endangered,  
18 threatened, or are candidate species pursuant to this chapter, no  
19 further authorization or approval is necessary under this article for  
20 that person to take the species identified in and in accordance with  
21 the federal Safe Harbor Agreement, if that person and the  
22 department follow all of the procedures specified in Section 2080.1,  
23 except that the determination of consistency shall be made by the  
24 department based only on the issuance criteria contained in this  
25 article.

26 (b) The department may adopt nonregulatory guidelines to  
27 clarify how the provisions of this chapter may be used in  
28 connection with voluntary local programs for routine and ongoing  
29 agricultural activities adopted pursuant to Article 3.5 (commencing  
30 with Section 2086) and natural community conservation plans  
31 adopted pursuant to Chapter 10 (commencing with Section 2800).

32 2089.24. The department may promulgate regulations to  
33 implement this article.